IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 27 OF 2007

Shri Ubjlal Pun
Prisoner, Presently serving
sentence at Central Jail,
Aguada, Sinquerim-Goa. .... Petitioner

V/s

1. State of Goa
Through under Home Dept. (General)
Secretariat, Porvorim, Goa.

2. Inspector General of Prisons
Collectorate Building North
Panaji-Goa.

3. Superintendent of Prisons
Central Jail Aguada,
Sinquerim-Goa. .... Respondents

Ms. Asha Dessai, Advocate for the Petitioner.

Ms. W. Coutinho, Public Prosecutor for Respondent No.1.

CORAM : N.A. BRITTO, J.

DATE : 6th SEPTEMBER, 2007

ORAL JUDGMENT :

Heard the learned Counsel on behalf of the Petitioner and the learned Public Prosecutor on behalf of the Respondent. Rule. By consent heard forthwith.

2. The Petitioner who is undergoing sentence of 10 years under Section 20(b)(ii) of the NDPS Act, 1985 w.e.f. 14/01/2001 had applied for parole by his application dated 12/07/2006 which came to be rejected by the impugned order dated 2/05/2007. The Petitioner who is a resident of Kullu in the State of Himachal Pradesh where his wife and children also reside had applied for parole on the ground that his wife was sick. Presumably, the Petitioner had not supported the said application with any medical certificate to prove the sickness of his wife. It appears that a report was called for from the Superintendent of Police, Kullu, Himachal Pradesh but the said Superintendent of Police, it appears, was not asked to verify at all whether the wife of the Petitioner was sick or not. It also appears that the Petitioner was originally from Nepal but before his arrest was settled with his family at Kalgen, Bursheni in the State of Himachal Pradesh. The report sent by Superintendent of Police, Kullu as per the learned Public Prosecutor, mentions that in case the accused is released on parole, he will leave with his family to Nepal. The impugned order states that the report shows that "if he is released on parole, he may jump the parole and may reside with his family." There appears to be non-application of mind while issuing the impugned order dated 2/05/2007.

3. The Petitioner not having produced any medical certificate in support of the ground on which he had applied for parole, the Inspector General of

Prisons ought to have called for a report and more particularly with a view to ascertain whether there was substance in the ground urged by the Petitioner in support of the application. The Inspector General of Prisons was free to call for any other information he might have desired to obtain to consider the fitness of the Petitioner to be released on parole, including information whether the Petitioner would adhere to the conditions of parole, if the same was granted to him.

4. In view of the above, the petition deserves to succeed. The impugned order dated 02/05/2007 is hereby set aside. The Inspector General of Prisons is hereby directed to verify whether the ground given by the Petitioner is correct or not. Needless to observe, the Inspector General of Prisons would be free to call for any other information as regards Petitioner as desired by him. Petition is allowed on the above terms. The entire exercise be completed within a period of 8 weeks and the application of the Petitioner be disposed off in accordance with law.

5. Rule made absolute on the above terms.

N.A. BRITTO, J.

NH/-